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FILE NUMBER:

October 19, 1995

2314.001

*By Hand*

Mr. William Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 332  
Washington, D.C. 20554

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RECEIVED

OCT 19 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

8683  
Re: RM ~~8563~~, MM Docket 95-137  
Comments and Counterproposals

Dear Mr. Caton:

Enclosed please find an original and four copies of Comments and Counterproposals in connection with the above-referenced Notice of Proposed Rulemaking. If you have any questions, please feel free to call me at any time.

Sincerely,



Marjorie R. Esman

MRE/ia

cc: James Gray  
John Karousos  
Alan Campbell

No. of Copies rec'd  
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**Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554**

**RECEIVED**

**OCT 19 1995**

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY**

In re	*	
	*	RM-8683
Amendment of Section 73.202(b)	*	MM Docket 95-137
Table of Allotments	*	
FM Broadcast Stations	*	
Milton, WV and Flemingsburg, KY	*	
*****		

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Division

**COMMENTS AND COUNTERPROPOSALS  
OF KENTUCKY RIVER BROADCASTING COMPANY,  
WMOR, INC., AND JAMES P. GRAY**

Kentucky River Broadcasting Company ("WCYO"), WMOR, Inc. ("WMOR"), and James P. Gray ("WCAK") (collectively "the Parties") jointly submit these Comments and Counterproposals in support of the Notice of Proposed Rulemaking RM-8683 (NPRM).<sup>1</sup> The Parties request congruous channel changes which will result in upgrades for each of their stations from Class A to Class C3 facilities. These changes are made possible by and are compatible with substitution of Channel 236A for Channel 292A at

The Parties have executed an Agreement whereby they agree to file joint Comments and to cooperate in obtaining grants of their respective applications if their Counterproposal is approved. A copy of that Agreement is attached.

Flemingsburg, KY and substitution of Channel 292B1 for Channel 292A at Milton, WV, as proposed by Simmons Broadcasting Company.

As the attached Engineering Statement shows, the proposed upgrades and channel changes meet the Commission's minimum distance separation and city grade service requirements and will eliminate existing short spacings. Also, the changes result in significant increases in population and area served by WMOR, WCAK, WCYO, and WFLE.

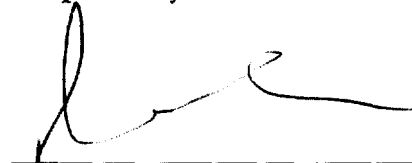
This counterproposal will not result in any loss of service or deprivation of local service from any community, but rather will provide additional service to Morehead, Carlisle, Irvine, and their surrounding areas. Therefore, the Counterproposal represents a more efficient arrangement of allotments. The Commission must ensure the fair, efficient, and equitable use of the radio spectrum. 47 U.S.C. §307(b) (1993). With expanded coverage areas the Parties will be able to reach many more listeners and therefore provide a more efficient use of the spectrum. Public interest considerations, which favor the upgrade of existing stations, will be furthered by the upgrades that the Parties propose.

If their Counterproposals are approved, each of the Parties agrees to file an application for a construction permit on the new channel in a timely manner, and, if granted, to build and operate facilities on the new channel.

## CONCLUSION

The Parties have demonstrated that Channel 291C3 is available for the upgrade of WMOR, Morehead, KY; Channel 221C3 is available for the upgrade of WCAK, Carlisle, KY; and Channel 264C3 is available for the upgrade of WCYO, Irvine, KY. These upgrades are consistent with the proposed allocation of Channel 236A at Flemingsburg, KY. This is consistent with the Commission's rules favoring upgrade of existing stations. The proposed upgrades are therefore in the public interest. The Parties urge the Commission to adopt the proposal in the Petition for Rulemaking and the Counterproposal proposed in these Comments.

Respectfully submitted



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REGINA S. WEDIG  
MARJORIE R. ESMAN (of Counsel)  
BORDELON, HAMLIN & THERIOT  
701 South Peters Street  
Suite 100  
New Orleans, LA 70130  
(504) 524-5328  
Counsel for Kentucky River  
Broadcasting Company;  
WMOR, Inc.; and James P. Gray

Dated: October 19, 1995

## AGREEMENT

This is an agreement between Kentucky River Broadcasting Company, Inc. ("WCYO") owner of WCYO, Irvine, Ky. and James P. Gray ("WCAK") owner of WCAK, Carlisle, Ky. and WMOR, Inc. ("WMOR") owner of WMOR, Morehead, Ky. to increase their respective radio facilities from FCC Class A facilities to FCC Class C3 facilities by requesting a swap of channels through the FCC rulemaking process.

WCYO, WCAK and WMOR (the "parties") hereby agree to the following:

(a.) To file a joint petition requesting: WCYO change from Channel 291A to Channel 264C3, and WCAK change from Channel 264A to Channel 221C3, and WMOR change from Channel 221A to Channel 291C3.

(b.) The Channel changes listed above are only made possible if WFLE, Flemingsburg, Ky. changes from Channel 292A to another channel and that the joint petition will be filed on or before October 19, 1995 in FCC Docket MM 95-137, the FCC proceeding in which Simmons Broadcasting Company has requested WFLE be changed from Channel 292A to Channel 230A.

(c.) That the parties agree to equally share the legal and engineering expenses involved in petitioning the FCC to accomplish upgrades for each of the parties facilities. Should the FCC order the requested channel changes then each party will be responsible for their own FCC filing fees and other costs for their respective applications.

(d.) The parties shall cooperate fully with each other to obtain grants of their respective applications and shall promptly provide the FCC with any additional information requested.

(e.) This agreement shall be binding on both parties, their successors and assigns. Each party recognizes that the other will be acting in reliance with the commitments made herein, and that any party which breaches this agreement will be liable for damages, including reasonable attorney's fees, or specific performance.

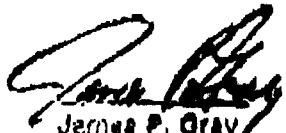
The undersigned hereby agree to the foregoing.

Kentucky River Broadcasting Company, Inc.  
1030 Winchester Road  
Box 281  
Irvine, Ky. 40336

WCAK  
James P. Gray  
10 Trinity Place  
Fort Thomas, Ky. 41078

By:

  
Kelly Wallingford, President date 10/12/95

  
James P. Gray date 10/11/95

WMOR, Inc.  
c/o WMOR  
113 East First Street  
Morehead, Ky. 40351

  
James Everett, President

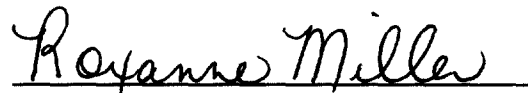
10/11/95  
date

**CERTIFICATE OF SERVICE**

I, Roxanne Miller, a secretary in the law firm of Bordelon, Hamlin & Theriot,  
hereby certify that I have served a copy of the above and foregoing document, this  
18 day of October, 1995, on the following:

John A. Karousos\*  
Federal Communications Commission  
Mass Media Services  
2025 M Street, N.W., Room 8337  
Washington, D.C. 20554

Alan C. Campbell  
Irwin, Campbell & Tannenwald, P.C.  
1320 18th St., N.W.  
Washington, D.C. 20036

  
Roxanne Miller

\* By Hand

## ENGINEERING STATEMENT

This technical statement and data support counterproposals by Kentucky River Broadcasting Company ("WCYO"), licensee of WCYO, Channel 291A, Irvine, Kentucky, WMOR, Inc. ("WMOR"), licensee of WMOR, Channel 221A, Morehead, Kentucky, and James P. Gray ("WCAK"), licensee of WCAK (formerly WWLW), Channel 264A, Carlisle, Kentucky. All three petitioners request congruous channel changes which result in upgrades for each of their stations from Class A to Class C3 facilities. These changes are made possible by and are compatible with substitution of Channel 236A for Channel 292A at Flemingsburg, Ky and substitution of Channel 292B1 for Channel 292A at Milton, West Virginia, as proposed by Simmons Broadcasting Company in MM Docket 95-137. The proposed upgrades and channel changes meet the Commission's minimum distance separation and city grade service requirements, and will eliminate existing short spacings. Also the changes result in significant increases in population and area served by WMOR, WCAK, WCYO and WFLE.

The proposed changes are as follows:

<u>Community</u>	<u>Current Channel</u>	<u>Proposed Channel</u>	<u>At Reference</u>
WMOR, Morehead, Ky.	221A 3.0 kw	291C3 25 kw	38 11' 17" 83 28' 37"
WCAK, Carlisle, Ky.	264A 6.0 kw	221C3 25 kw	38 17' 42" 83 52' 32"
WCYO, Irvine, Ky.	291A 6.0 kw	264C3 25.0 kw	37 43' 27" 84 02' 38"
WFLE, Flemingsburg, Ky.	292A 3.0 kw	236A 6.0 kw	38 24' 42" 83 34' 41"

These proposals meet the minimum mileage separation requirements of Section 73.207 of the Rules as demonstrated by the FM spacing studies listed on pages 3 and 4. The reference coordinates meet the requirements of Sections 73.315 regarding city grade service to their respective communities and the map on page 5 shows the respective 70 dBu contours using each proposed channel, at the proposed reference site, with a HAAT of 100 meters.

Existing short spacing will be eliminated by the proposed changes. WCYO's licensed site is short spaced 4.75 kilometers to WVRB, Channel 290A, Wilmore, Ky. and WCAK's licensed site is short spaced 1.55 kilometers to WWYC, Channel 261C2, Winchester, Ky. (see page 6). WFLE's licensed site is short spaced 12.07 kilometers to WCGW, Channel 292A, Versailles, Ky. (see page 7). Elimination of these short spacings will decrease interference to WVRB, WWYC and WCGW.

The proposed changes result in significant increases in population and area served by the three facilities as shown in the following table:

Station	60 dBu Area Served			Population		
	Current	Proposed	Increase	Current	Proposed	Increase
WCAK Carlisle, Ky.	2501 Km	4743.5 Km	89.6%	35,821	89,324	149%
WCYO Irvine, Ky.	2508.3 Km	4727.1 Km	88.4%	53,670	148,632	177%
WMOR Morehead, Ky.	1794.5 Km	4722.5 Km	163%	32,406	83,419	157%

The results of the proposed changes are WMOR, WCAK, and WCYO will upgrade from Class A to Class C3 facilities and WFLE upgrades from a 3.0 kilowatt to 6.0 kilowatt Class A facility while allowing WFXN(FM) to upgrade from a Class A to Class B1 facility. The public interest is served by these changes in that these stations will realize significant increases in population and area served, while eliminating interference to stations WVRB, WWYC and WCGW.

Prepared by

Jim Gray  
10 Trinity Place  
Fort Thomas, Ky. 41075  
606-781-5715 phone/fax

October 15, 1995



# WCAK CHANNEL 221C3

REFERENCE  
38 17 42 N  
83 52 32 W

CLASS = C3  
Current Spacings

DISPLAY DATES  
DATA 09-29-95  
SEARCH 10-12-95

----- Channel 221 - 92.1 MHz -----							
Call	Channel	Location		Dist	Azi	FCC	Margin
AD221	AD 221A	Owingsville	KY	14.75	143.9	142.0	-127.25
WMORFM	AP 221A	Morehead	KY	39.40	108.5	142.0	-102.60
WMORFM	LI 221A	Morehead	KY	39.45	108.6	142.0	-102.55
WYGE.C	CPM 222C2	London	KY	127.47	184.6	117.0	10.47
WROU	LI 221A	West Carrollton	OH	161.77	348.3	142.0	19.77
WFPK	LI 220C1	Louisville	KY	164.79	268.6	144.0	20.79
WSAC	LI 222A	Louisa	KY	110.07	96.5	89.0	21.07
WVXU	LI 219B	Cincinnati	OH	106.94	329.8	71.0	35.94
WPPT	LI 223B	Cincinnati	OH	108.84	327.8	71.0	37.84
WMPOFM	LI 221A	Middleport	OH	180.67	61.4	142.0	38.67
WMEJ	LI 220A	Proctorville	OH	128.58	81.6	89.0	39.58
WDICFM	LI 221A	Clinchco	VA	182.92	133.9	142.0	40.92
WLKSF	CPM 275A	West Liberty	KY	55.06	121.2	12.0	43.06
WZQQ	LI 222A	Hyden	KY	132.22	160.6	89.0	43.22
WOSP	LI 218A	Portsmouth	OH	87.89	53.5	42.0	45.89
WCOLFM	LI 222B	Columbus	OH	199.99	21.2	145.0	54.99
WOUH	LI 220A	Chillicothe	OH	147.91	38.6	89.0	58.91
WRVCFM	CP 224A	Catlettsburg	KY	113.28	79.8	42.0	71.28
WRVCFM	LI 224A	Catlettsburg	KY	113.85	80.0	42.0	71.85

# WCYO 264C3 REFERENCE SITE

REFERENCE  
37 43 27 N  
84 02 38 W

CLASS = C3  
Current Spacings

DISPLAY DATES  
DATA 09-29-95  
SEARCH 10-12-95

----- Channel 264 - 100.7 MHz -----							
Call	Channel	Location		Dist	Azi	FCC	Margin
WWLW	LI 264A	Carlisle	KY	65.07	13.0	142.0	-76.93
WSGS	LI 266C	Hazard	KY	96.39	127.5	96.0	0.39
WWYC	LI 261C2	Winchester	KY	56.70	321.7	56.0	0.70
WLSK.C	CP 265C3	Lebanon	KY	103.51	261.8	99.0	4.51
WKEE	LI 263B	Huntington	WV	156.57	61.1	145.0	11.57
WLSK	LI 265A	Lebanon	KY	103.51	261.8	89.0	14.51
WTFX	LI 263C2	Louisville	KY	139.85	292.3	117.0	22.85
WEEC	LI 264B	Springfield	OH	248.86	3.4	211.0	37.86
AD264	AD 264A	Bulls Gap	TN	182.90	152.8	142.0	40.90
WRVG	LI 210A	Georgetown	KY	70.06	320.3	12.0	58.06
WRICFM	LI 264A	Richlands	VA	200.21	107.9	142.0	58.21
WRICFM	CP 264A	Richlands	VA	200.21	107.9	142.0	58.21
WAGX	LI 267A	Manchester	OH	102.60	18.3	42.0	60.60
WUSY	LI 264C	Cleveland	TN	300.66	202.0	237.0	63.66
WIZF	LI 265A	Erlanger	KY	159.69	343.9	89.0	70.69
WTHQ	LI 267A	Shelbyville	KY	112.95	299.2	42.0	70.95
WVBA	LI 210C3	Frankfort	KY	87.44	307.6	14.0	73.44
WOKIFM	LI 262C	Oak Ridge	TN	170.17	185.6	96.0	74.17

# WMOR 291C3 REFERENCE SITE

## REFERENCE

38 11 17 N  
83 28 37 W

CLASS = C3

Current Spacings

## DISPLAY DATES

DATA 09-29-95

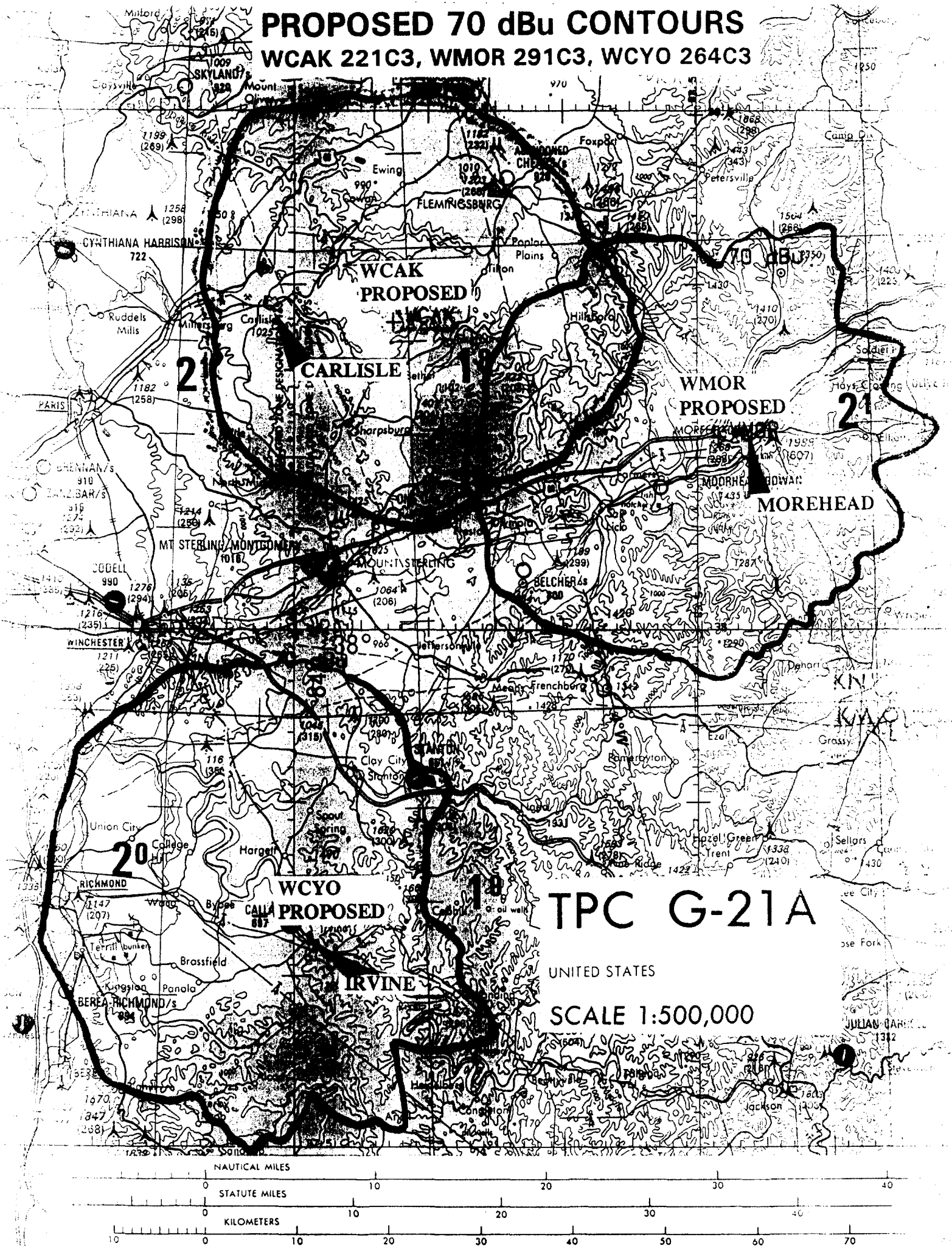
SEARCH 10-12-95

----- Channel 291 - 106.1 MHz -----

Call	Channel	Location		Dist	Azi	FCC	Margin
WCYO	LI 291A	Irvine	KY	65.52	218.7	142.0	-76.48
DE292	DE 292A	Flemingsburg	KY	26.36	340.5	89.0	-62.64
WFLEFM	LI 292A	Flemingsburg	KY	26.36	340.5	89.0	-62.64
WMSTFM	LI 288A	Mount Sterling	KY	42.30	255.7	42.0	0.30
AD292	AD 292B1	Milton	WV	114.99	72.9	114.0	0.99
WINN	LI 291B	North Vernon	IN	217.02	297.5	211.0	6.02
WCGW	LI 292A	Versailles	KY	104.79	261.7	89.0	15.79
WPBFFM	LI 290B	Middletown	OH	165.81	333.1	145.0	20.81
DE292	DE 292A	Milton	WV	116.30	71.9	89.0	27.30
WZZWFM	LI 292A	Milton	WV	116.30	71.9	89.0	27.30
WLGCFM	LI 289C3	Greenup	KY	70.66	49.9	43.0	27.66
WVRB.C	CPM 290A	Wilmore	KY	117.74	246.7	89.0	28.74
WJSNFM	LI 293A	Jackson	KY	71.61	174.2	42.0	29.61
WSRWFM	LI 294B	Hillsboro	OH	109.17	354.1	71.0	38.17
WRZZ	LI 291A	Ravenswood	WV	183.50	58.5	142.0	41.50
WXXZFM	LI 288A	Prestonsburg	KY	85.92	133.2	42.0	43.92
WQHY	LI 238C	Prestonsburg	KY	83.62	130.7	31.0	52.62
WKXOFM	LI 294A	Berea	KY	99.97	220.7	42.0	57.97
WTNJ	LI 290B	Mount Hope	WV	203.14	98.8	145.0	58.14
ALOPEN	AL 291A	Elizabeth	WV	205.67	61.1	142.0	63.67
WRZZ.A	AP 291A	Elizabeth	WV	208.00	57.9	142.0	66.00
WNVAFM	LI 292A	Norton	VA	156.70	149.8	89.0	67.70
CP291	CP 291A	Saltville	VA	212.17	132.9	142.0	70.17
WRIL	LI 292A	Pineville	KY	160.42	187.3	89.0	71.42
WRIL.C	CP 292A	Pineville	KY	160.42	187.3	89.0	71.42
WNKR	LI 293A	Williamstown	KY	116.88	298.4	42.0	74.88

# PROPOSED 70 dBu CONTOURS

## WCAK 221C3, WMOR 291C3, WCYO 264C3



# WCYO CHANNEL 291A EXISTING

REFERENCE  
37 43 38 N  
83 56 34 W

CLASS = A  
Current Spacings

DISPLAY DATES  
DATA 09-29-95  
SEARCH 10-12-95

----- Channel 291 - 106.1 MHz -----

Call	Channel	Location		Dist	Azi	FCC	Margin
WCYO	LI 291A	Irvine	KY	0.00	0.0	115.0	-115.00
WVRB.C	CPM 290A	Wilmore	KY	67.25	273.6	72.0	-4.75
WCGW	LI 292A	Versailles	KY	72.16	299.6	72.0	0.16
WKXOFM	LI 294A	Berea	KY	34.57	224.2	31.0	3.57
WMSTFM	LI 288A	Mount Sterling	KY	40.64	359.8	31.0	9.64
WFLEFM	LI 292A	Flemingsburg	KY	82.44	22.6	72.0	10.44
DE292	DE 292A	Flemingsburg	KY	82.44	22.6	72.0	10.44
WJSNFM	LI 293A	Jackson	KY	52.36	112.5	31.0	21.36
WTBK	LI 289A	Manchester	KY	66.33	165.3	31.0	35.33
WINN	LI 291B	North Vernon	IN	213.92	314.7	178.0	35.92
WRIL.C	CP 292A	Pineville	KY	110.01	169.0	72.0	38.01
WRIL	LI 292A	Pineville	KY	110.01	169.0	72.0	38.01
DE290	DE 290A	Whitley City	KY	118.95	203.6	72.0	46.95
WHAY	LI 290A	Whitley City	KY	118.95	203.6	72.0	46.95
AD290	AD 290A	Tazewell	TN	144.30	167.2	72.0	72.30
WXKZFM	LI 288A	Prestonsburg	KY	104.08	94.0	31.0	73.08
WNVAFM	LI 292A	Norton	VA	146.78	124.8	72.0	74.78

# WCAK CHANNEL 264A

REFERENCE  
38 17 42 N  
83 52 32 W

CLASS = A  
Current Spacings

DISPLAY DATES  
DATA 09-29-95  
SEARCH 10-12-95

----- Channel 264 - 100.7 MHz -----

Call	Channel	Location		Dist	Azi	FCC	Margin
WWLW	LI 264A	Carlisle	KY	0.00	0.0	115.0	-115.00
WWYC	LI 261C2	Winchester	KY	53.45	249.2	55.0	-1.55
WEEC	LI 264B	Springfield	OH	185.03	0.2	178.0	7.03
WAGX	LI 267A	Manchester	OH	38.29	27.4	31.0	7.29
WKEE	LI 263B	Huntington	WV	123.07	84.5	113.0	10.07
WIZF	LI 265A	Erlanger	KY	107.68	326.9	72.0	35.68
WTFX	LI 263C2	Louisville	KY	144.53	266.0	106.0	38.53
WSGS	LI 266C	Hazard	KY	136.68	153.3	95.0	41.68
WRVG	LI 210A	Georgetown	KY	60.41	260.9	10.0	50.41
WLSK.C	CP 265C3	Lebanon	KY	140.79	236.4	89.0	51.79
WXIZ	LI 265A	Waverly	OH	128.32	36.3	72.0	56.32
WLSK	LI 265A	Lebanon	KY	140.79	236.4	72.0	68.79
WVBA	LI 210C3	Frankfort	KY	84.73	263.2	12.0	72.73

# WFLE SPACING STUDY

REFERENCE  
38 24 42 N  
83 34 41 W

CLASS = A  
Current Spacings

DISPLAY DATES  
DATA 09-29-95  
SEARCH 10-15-95

----- Channel 292 - 106.3 MHz -----

Call		Channel	Location		Dist	Azi	FCC	Margin
DE292	DE	292A	Flemingsburg	KY	0.00	0.0	115.0	-115.00
WFLEFM	LI	292A	Flemingsburg	KY	0.00	0.0	115.0	-115.00
AD292	AD	292B1	Milton	WV	119.14	85.7	143.0	-23.86
WCGW	LI	292A	Versailles	KY	102.93	247.0	115.0	-12.07
WZZWFM	LI	292A	Milton	WV	119.94	84.6	115.0	4.94
DE292	DE	292A	Milton	WV	119.94	84.6	115.0	4.94
WCYO	LI	291A	Irvine	KY	82.44	202.9	72.0	10.44
WSRWFM	LI	294B	Hillsboro	OH	83.79	358.3	69.0	14.79
WLGC FM	LI	289C3	Greenup	KY	66.25	71.8	42.0	24.25
WJSNFM	LI	293A	Jackson	KY	97.41	170.5	72.0	25.41
WNKR	LI	293A	Williamstown	KY	98.90	288.0	72.0	26.90
WCKX	LI	292A	London	OH	164.08	4.6	115.0	49.08
WNVAFM	LI	292A	Norton	VA	182.66	151.2	115.0	67.66
WRIL.C	CP	292A	Pineville	KY	184.31	183.6	115.0	69.31
WRIL	LI	292A	Pineville	KY	184.31	183.6	115.0	69.31
WPBFFM	LI	290B	Middletown	OH	139.71	331.7	69.0	70.71